

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES FRY,

Plaintiff,

v.

AZTEC DOBERMAN PINSCHER CLUB OF
SAN DIEGO,

Defendant.

Civil No. 11-cv-1329-BTM (POR)

**SCHEDULING ORDER REGULATING
DISCOVERY AND OTHER PRETRIAL
PROCEEDINGS**

On February 6, 2012, the Court held a Case Management Conference. Appearing before the Court were: Don McInnis, Esq., counsel for Plaintiff; and Pam Scholefield, Esq., counsel for Defendant. After consulting with the parties and being advised of the status of the case, and good cause appearing, **IT IS HEREBY ORDERED:**

1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be *filed* on or before **February 27, 2012**.

2. On or before **April 2, 2012**, all parties shall exchange with all other parties a list of all expert witnesses expected to be called at trial. The parties must identify any person who may be used at trial to present evidence pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement is not limited to retained experts. The list shall include the name, address, and phone number of the expert and a brief statement identifying the subject areas as to which the expert is expected to testify. The list shall also include the normal rates the expert charges for deposition and trial testimony. On or before **April 16, 2012**, any party may supplement its designation in response

1 to any other party's designation so long as that party has not previously retained an expert to testify
2 on that subject.

3 3. A Mandatory Settlement Conference shall be conducted on **May 14, 2012**, at
4 **10:00 a.m.**, in the chambers of the Honorable Louisa S Porter's successor. The parties shall
5 exchange and lodge settlement statements directly with Judge Porter's successor on or before **May**
6 **7, 2012**. The settlement statements should include a neutral factual statement of the case, identify
7 controlling legal issues, and concisely set out issues of liability and damages, including any
8 settlement demands and offers to date and addressing special and general damages where applicable.
9 The settlement statements **shall not** be filed with the Clerk of the Court.

10 All parties and claims adjusters for insured defendants and representatives with complete
11 authority¹ to enter into a binding settlement, as well as the principal attorney responsible for the
12 litigation, shall be present and legally and factually prepared to discuss and resolve the case at the
13 settlement conference. Corporate counsel and/or retained outside corporate counsel **shall not** appear
14 on behalf of a corporation as the party who has the authority to negotiate and enter into a settlement.
15 The parties must be legally and factually prepared to discuss and resolve the case at the mandatory
16 settlement conference. All conference discussions will be informal, off the record, privileged and
17 confidential.

18 Mandatory settlement conferences shall not be rescheduled without a showing of good cause
19 and adequate notice to the Court. If counsel wish to reschedule this conference, they shall jointly
20 contact the Court at least 10 days prior to the conference. Absent exceptional circumstances, the
21 Court will not reschedule this conference with less than 10 days notice. Only in extreme
22 circumstances will the Court reschedule a mandatory settlement conference with less than 24 hours
23 notice.

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26 "Complete authority" to settle means that the individuals at the settlement conference must be authorized to fully
27 explore settlement options and to agree at that time to any settlement terms acceptable to the parties. G. Heileman
28 Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered
discretion and authority" to change the settlement position of a party. Pitman v. Brinker Intl., Inc., 216 F.R.D. 481,
485-486 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the
conference includes that the person's view of the case may be altered during the face to face conference. *Id.* at 486.
A limited or a sum certain of authority is not adequate. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

4. Each expert witness designated by a party shall prepare a written report to be provided to all other parties no later than **June 22, 2012**, containing the information required by Fed. R. Civ. P. 26(a)(2)(A) and (B). **Except as provided in paragraph 4, below, any party that fails to make these disclosures shall not, absent substantial justification, be permitted to use evidence or testimony not disclosed at any hearing or at the time of trial. In addition, the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

5. Any party, through any expert designated shall, in accordance with Fed. R. Civ. P. 26(a)(2)(C) and Fed. R. Civ. P. 26(e), supplement any of its expert reports regarding evidence intended solely to contradict or rebut evidence on the same subject matter identified in an expert report submitted by another party. Any such supplemental reports are due on or before **July 6, 2012**.

6. All discovery, including expert discovery, shall be completed on or before **July 30, 2012**. "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure must be initiated a sufficient period of time in advance of the cut-off date, so **that it may be completed** by the cut-off date, taking into account the times for services, notice, and response as set forth in the Federal Rules of Civil Procedure. All disputes concerning discovery shall be brought to the attention of the Magistrate Judge no later than 30 days following the date upon which the event giving rise to the discovery dispute occurred. Counsel shall meet and confer pursuant to the requirements of Fed. R. Civ. P. 26 and Local Rule 26.1(a).

7. All motions, other than motions to amend or join parties, or motions in limine, shall be **FILED** on or before **August 31, 2012**. Motions will not be heard or calendared unless counsel for the moving party has obtained a motion hearing date from the law clerk of the judge who will hear the motion. **Be advised that the parties must file their moving papers within three days of receiving the motion hearing date from the Court. Be further advised that the period of time between the date you request a motion date and the hearing date may be up to two months. Please plan accordingly.**

Briefs or memoranda in support of or in opposition to any pending motion shall not exceed 25 pages in length without permission of the judge or magistrate judge who will hear the motion. No reply memorandum shall exceed 10 pages without leave of the judge or magistrate judge who

1 will hear the motion.

2 8. In a bench trial, counsel shall serve on each other and file with the Clerk of the Court
3 their Memoranda of Contentions of Fact and Law in compliance with Local Rule 16.1(f)(2), (3) and
4 (4) on or before **November 19, 2012**.

5 9. All parties or their counsel shall also fully comply with the Pretrial Disclosure
6 requirements of Fed. R. Civ. P. 26(a)(3) on or before **November 19, 2012**. *Failure to comply with*
7 *these disclosures requirements could result in evidence preclusion or other sanctions under Fed. R.*
8 *Civ. P. 37.*

9 10. The parties shall meet and confer on the preparation of the Pretrial Order required by
10 the Honorable Barry Ted Moskowitz, and take the action required by Local Rule 16.1(f)(4), on or
11 before **November 26, 2012**. The parties shall discuss and prepare a proposed Pretrial Order
12 containing the following:

- 13 a. A statement to be read to the jury, not in excess of one page, setting forth the nature
14 of the case, claims and defenses.
- 15 b. A list of the causes of action to be tried, referenced to the Complaint and
16 Counterclaim, if any. For each cause of action, the order shall succinctly list the
17 elements of the claim, damages and any defenses. A cause of action in the Complaint
18 or Counterclaim which is not listed shall be dismissed with prejudice.
- 19 c. A list of:
 - 20 (i). each witness that counsel actually expects to call at trial with a brief
21 statement, not exceeding four sentences, of the substance of the witnesses'
22 testimony.
 - 23 (ii). each expert witness that counsel actually expects to call at trial with a brief
24 statement, not exceeding four sentences, of the substance of the expert
25 witnesses' testimony.
 - 26 (iii). additional witnesses, including experts, that counsel do not expect to call at
27 this time but reserve the right to call at trial along with a brief statement, not
28 exceeding four sentences, of the substance of the witnesses' testimony.

d. A list of:

- (i). all exhibits that counsel actually expect to offer at trial with a single-sentence description of each exhibit.
- (ii). additional exhibits that counsel do not expect to offer at this time but reserve the right to offer if necessary at trial along with a single-sentence description.

e. A statement of all facts to which the parties stipulate. This statement shall be on a separate page and will be read to and provided to the jury. The parties are encouraged to meet with the assigned Magistrate Judge to work out as many stipulations of fact as possible.

f. A list of all deposition transcripts by page and line, or video tape depositions by section, that will be offered at trial.

g. In addition to filing proposed jury instructions in accordance with Fed. R. Civ. P. 51 and CivLR 51.1, the parties shall e-mail the proposed instructions in Word or WordPerfect form to Chambers. If a party disagrees with a particular instruction, the party shall submit an alternate instruction.

The parties are encouraged to consult with the assigned magistrate judge to work out any problems in preparation of the proposed pretrial order. The Court will entertain any questions concerning the conduct of the trial at the pretrial conference.

11. The final Pretrial Order, including objections any party has to any other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and lodged with the Clerk of the Court on or before **December 10, 2012**, and shall be in the form prescribed in and in compliance with Local Rule 16.1 (f)(6). Counsel shall also bring a court copy of the final Pretrial Order to the Pretrial Conference.

12. The Pretrial Conference shall be held before the **Honorable Barry T. Moskowitz**, United States District Court Judge, on **December 18, 2012**, at **4:00 p.m.**

13. The dates and times set forth herein will not be further modified except for good cause shown.


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2 14. Counsel for Defendant shall serve a copy of this order on all parties that enter this case
3 hereafter.

4 **IT IS SO ORDERED.**

5 DATED: February 7, 2012

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7 LOUISA S PORTER
8 United States Magistrate Judge

9 cc: The Honorable Barry T. Moskowitz
10 All parties
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